



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

**VIA FACSIMILE AND FIRST CLASS MAIL**

Stephen Hershkowitz  
Sandler, Reiff & Young, P.C.  
50 E Street, S.E.  
Suite 300  
Washington, DC 20003

DEC 18 2006

RE: MUR 5744  
Hynes for Senate and Jeffrey C. Wagner,  
in his official capacity as treasurer

Dear Mr. Hershkowitz:

On November 30, 2006, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your client's behalf in settlement of violations of 2 U.S.C. §§ 434(b) and 441a(i)(2)(B) and 11 C.F.R. § 103.3(b)(2). Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within thirty days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within thirty days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Schwartz", is written over a set of horizontal lines.

Adam Schwartz  
Attorney

Enclosure  
Conciliation Agreement

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**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of

Hynes for Senate and Jeffrey C. Wagner,  
in his official capacity as treasurer

MUR: 5744

**CONCILIATION AGREEMENT**

This matter was initiated by the Federal Election Commission (the "Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that Hynes for Senate and Jeffrey C. Wagner, in his official capacity as treasurer (the "Committee"), violated 2 U.S.C. §§ 434(b) and 441a(i)(2)(B) and 11 C.F.R. § 103.3(b)(2).

NOW, THEREFORE, the Commission and Committee, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Committee and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. The Committee has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. The Committee enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

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1. Hynes for Senate is a political committee within the meaning of 2 U.S.C. § 431(4). It was the authorized committee for Daniel W. Hynes, a candidate for the Democratic Party's nomination for the United States Senate from Illinois in 2004.
2. Jeffrey C. Wagner is the treasurer of Hynes for Senate.

#### **Reporting of Debts and Obligations**

3. The Federal Election Campaign Act of 1971, as amended (the "Act") requires that political committees disclose debts and obligations in accordance with 2 U.S.C. § 434(b), including the total amount and nature of outstanding debts and obligations owed by or to the committee. *See* 2 U.S.C. § 434(b)(8).

4. On April 15, 2004, the Committee filed its April 2004 Quarterly Report. On the detailed Summary Page (Page 3), the Committee reported \$175,000 in "loans made and guaranteed by the candidate," and \$12,000 in "all other loans." At the time, the Committee also had additional debts and obligations to vendors, which the Committee did not list in its report.

5. The Committee amended its April 2004 Quarterly Report on December 2, 2004, to include a total of \$409,998.05 in debts and obligations not present on its original April 2004 Quarterly Report. The amended report accurately reflected the Committee's total outstanding debts and obligations as of March 31, 2004.

#### **Millionaire's Amendment**

6. In some instances, the Act permits candidates facing opponents who finance their candidacy with personal funds to avail themselves of increased contribution limits for individuals. *See* 2 U.S.C. § 441a(i)(1). However, once a self-financed candidate ceases to be a candidate, his or her opponents and their authorized committees shall not accept any contribution under the increased

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limit after the date on which the self-financed candidate ceases to be a candidate to the extent that the amount of such increased limit is attributable to the self-financed candidate. 2 U.S.C.

§ 441a(i)(2)(B).

7. Mr. Hynes ran in the Democratic primary for the U.S. Senate from Illinois against Blair Hull, a multi-millionaire who spent \$29 million of his own money on his campaign. Based on Mr. Hull's campaign expenditures, the Committee could accept contributions from individuals up to \$12,000 for the primary election.

8. Both Mr. Hynes and Mr. Hull lost in the March 16, 2004, primary election, thus ending their candidacies.

9. After the primary election, the Committee continued its fundraising efforts in order to pay debts and obligations of approximately \$400,000 from the primary campaign. As a result of these efforts, the Committee raised \$110,320.20 from individuals under the increased individual contribution limits in place while Mr. Hull was a candidate.

#### **MUR 5405**

10. When the treasurer of a political committee deposits a contribution and later discovers that it came from a prohibited source based on new evidence not available to the political committee at the time of receipt and deposit, the treasurer shall refund the contribution within thirty days of the date on which the illegality was discovered. *See* 11 C.F.R. § 103.3(b)(2).

11. By letter dated April 27, 2005, in connection with MUR 5405, the Commission instructed the Committee to disgorge \$71,000 in contributions made in the names of others in violation of 2 U.S.C. § 441f to the U.S. Treasury within thirty days. The Commission found no reason to believe that the Committee violated 2 U.S.C. § 441f by knowingly accepting contributions made in the names of others. The Committee should have disgorged the contributions within thirty days of the

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date on which the Committee was instructed by the Commission to do so, but the Committee failed to do so.

V. To avoid the disruption and expense of litigation, the Committee will not contest that it did not comply with:

- i. 2 U.S.C. § 441a(i)(2)(B) by accepting contributions under increased contribution limits after the self-financed candidate, whose expenditures led to the increased contribution limits, ceased to be a candidate;
- ii. 2 U.S.C. § 434(b) by failing to properly disclose debts and obligations on its April 2004 Quarterly Report; and
- iii. 11 C.F.R. § 103.3(b)(2) by failing to disgorge improper contributions within thirty days of receiving notice of the improper nature of the contributions.

2. The Committee contends that:

- i. the omission of certain debts to vendors in its April 2004 Quarterly Report was the result of an inadvertent administrative error by the Committee;
- ii. it continued to accept increased contributions available under 2 U.S.C. § 441a(i)(1) only after receiving advice from two attorneys that doing so would not violate federal election laws. The Committee contends that it acted in good faith and reasonably relied upon the advice of counsel that it could accept contributions under the increased limits after the opposing candidate ceased to be a candidate for the purpose of retiring debt incurred while the self-financed candidate was seeking federal office; and

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- iii. it failed to disgorge \$71,000 in improper contributions because the Committee had insufficient funds to make the disgorgement and satisfy all of the claims on its limited financial resources.

VI. The Committee will take the following actions:

1. The Committee will pay a civil penalty to the Federal Election Commission in the amount of seventy six thousand five hundred dollars (\$76,500.00). This civil penalty is based on the facts and circumstances of this matter, including reliance on the advice of counsel to accept increased contributions under 2 U.S.C. § 441a(i)(1), for the purpose of retiring debt incurred while the self-financed candidate was seeking federal office, after the self-financed candidate ceased to be a candidate. In addition, the Committee agrees that after it has satisfied the current financial obligations set forth on Schedule D of its July 2006 Quarterly Report, it will immediately disgorge any remaining funds or future receipts to the United States Treasury.

2. The Committee, through recent filings with the Commission and additional representations, has indicated that financial hardship prevents it from paying a civil penalty, making a disgorgement, or refunding contributions greater than seventy-six thousand five hundred dollars (\$76,500). The Commission regards these filings and representations as material representations. If evidence is uncovered indicating its financial condition is not as stated, a total civil penalty of one hundred seven thousand dollars (\$107,000), disgorgement of contributions made in the names of others, and refund to contributors all contributions in excess of the limit set forth in 2 U.S.C. § 441a(a)(1)(A), which represents the amounts that the Commission would ordinarily seek for the violations at issue, shall be immediately due, pursuant to 2 U.S.C. § 437g(a)(5)(B).

3. The Committee will cease and desist from engaging in activities that violate 2 U.S.C. §§ 434(b), 441a(i)(2)(B), or 11 C.F.R. § 103.3(b)(2).

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VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

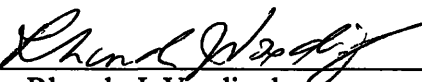
VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.


IX. The Committee shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

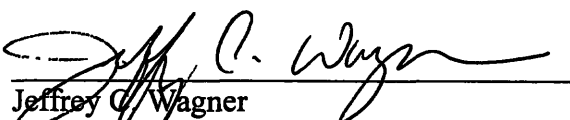
FOR THE COMMISSION:

Lawrence H. Norton  
General Counsel

BY:   
Rhonda J. Vosdigh  
Associate General Counsel  
for Enforcement

  
Date

FOR THE RESPONDENTS:

  
Jeffrey C. Wagner  
Treasurer, Hynes for Senate

  
Date

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